

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLARD L. SLOAN, EUGENE J.
WINNINGHAM, JAMES L. KELLEY,
on behalf of themselves and a similarly
situated class,

Plaintiffs,

v.

BORGWARNER, INC., BORGWARNER
FLEXIBLE BENEFITS PLANS and
BORGWARNER DIVERSIFIED
TRANSMISSION PRODUCTS, INC.,

Defendants.

Case No. 09-cv-10918

Paul D. Borman
United States District Judge

Mona K. Majzoub
United States Magistrate Judge

ORDER REGARDING AUGUST 22, 2013 TELEPHONE CONFERENCE
AND THE ISSUE OF RULING ON VESTING

It is clear to the Court now, after speaking with the parties on August 22, 2013 in a Court-initiated conference call, and having now read Mr. Burchfield's November 29, 2012 letter, that BorgWarner is not in agreement with the Court's holding the vesting issue in abeyance unless the Court is prepared to decide the comparability issue in BorgWarner's favor – and on the present record. Since Plaintiffs contend that additional discovery is necessary to tee up the comparability issue, BorgWarner asks to have its motion for summary judgment on the vesting issue decided now.

Accordingly, the Court finds that BorgWarner, who in good faith filed a motion seeking summary judgment on the issue of vesting, and who timely objected to holding the vesting issue in abeyance if it would necessitate additional discovery or hearings on the comparability issue, is entitled to a decision now from the Court on the issue of vesting.

In view of the time that has passed since the issue of vesting was originally briefed, the Court invites the parties each to file a supplemental brief, up to 15 pages length, supplementing, updating or otherwise supporting their original briefs on the issue of vesting only. The supplemental briefs should be filed on or before September 16, 2013. The Court will then address the vesting issue expeditiously.

IT IS SO ORDERED.

s/Paul D. Borman
Paul D. Borman
United States District Judge

Dated: August 23, 2013

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 23, 2013.

s/Deborah Tofil
Case Manager